REMARKS

Applicants and the undersigned are most grateful for the time and effort accorded the instant application by the Examiner. The Office is respectfully requested to reconsider the rejection present in the outstanding Office Action in light of the following remarks.

In the outstanding Office Action, pending Claims 1-17 were rejected and the rejection made final. Claim 1 is an independent claim; the other claims are dependent claims. Claim 1 has been rewritten, and Claim 18 has been added. Applicants intend no change in the scope of the claims by the changes made by this amendment. It should be noted these amendments are not in acquiescence of the Office's position on allowability of the claims, but merely to expedite prosecution.

Applicant's counsel and one of the inventors of the application conducted an interview with the Examiner on October 17, 2006. The outstanding objections and rejections in the application were discussed, but no agreement was reached with respect to the claims.

The present invention broadly contemplates automatically generating marketing promotions for Internet websites based on real-time data obtained through controlled short-term experiments that determine market sensitivity. (Page 1, paragraph 3) The method and system of the present invention preferably allow merchants to modify the nature of the experiment and the propagation of optimal values. (Page 6, paragraph 20) The optimal promotion determined by the system is intended to optimize an economic

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value such as profit. The economic variable to be optimized may be financial, such as profit or revenue. Alternatively, the economic variable may be another quantity of interest, such as market share, customer satisfaction, customer retention at the website, or utilizing of manufacturing or shipping resources, for example. (Pages 15-16, paragraph 76) Indeed, in the example given on Page 22 of the application, incremental profit is being maximized, and the promotion which maximizes same is not the promotion that was accepted the most frequently.

Claims 1, 15, and 16 stand objected to because of various informalities. The claims in contention have been amended to address this issue. Reconsideration and withdrawal of these objections is respectfully requested.

Claims 1-17 stand rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,918,014 to Robinson in view of U.S. Patent No. 6,567,786 to Bibelnieks et al. Reconsideration and withdrawal of the present rejections are hereby respectfully requested.

As best understood, Robinson appears to be directed to displaying advertising to users of the World Wide Web based upon what "community" they are in. See Col. 2, lines 23-26 ("If the members of a particular consumer's community tend to click on a particular Web ad, then there is a certain likelihood that the subject consumer will also tend to click on that ad.") As such, the concept underlying Robinson appears to be to select an advertisement for display based solely upon the likelihood the advertisement will have the maximum possible click through rate. Thus, although Robinson randomly displays advertisements to certain groups of visitors, there is no mention or suggestion of

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running experiments on randomly chosen visitors to the website and then utilizing the data from those experiments in real-time analyses to determine an optional promotion. It is respectfully submitted that there is a stark distinction between random sampling based upon user profiles and running experiments on randomly chosen visitors for which profiling is not a necessary step. Additionally, as asserted in the Office Action, Robinson does not teach or suggest determining an optimal promotion that optimizes at least one economic variable or value.

Bibelnieks does not overcome the deficiencies of Robinson set forth above. As best understood, Bibelnieks optimizes marketing plans to customers over an extended period of time. Instead of "focusing on an individual promotion event and determining which customers, based on historical data, meet a certain ROD criteria..., the present invention focuses on a particular customer or customer group (called a class), and their ROI value with respect to an entire set of promotion events proposed to be implemented over a period of time." (Column 2, lines 60-68) There is no mention in Bibelnieks of running experiments on randomly chosen visitors to the website and then utilizing the data from those experiments in real-time analyses to determine an optional promotion. Further, there is no mention or teaching of optimizing promotions for a website. Rather, the promotional plans produced by Bibelnieks includes all types of advertising, including online advertising, direct marketing, telephone marketing, and so on.

A 35 USC 103(a) rejection requires that the combined cited references provide both the motivation to combine the references and an expectation of success. The expectation of success necessitates that the two invention are combinable both in practice

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and in theory. Not only is there no motivation to combine the references, no expectation

of success, but actually combining the references would not produce the claimed

invention. Thus, the claimed invention is patentable over the combined references and

the state of the art.

Independent Claim 1 recites (a) receiving configuration data from the Internet

merchant, wherein such configuration data assists in communication with the Internet

merchant; (b) running multiple experiments according to the configuration data on an on-

going basis on randomly chosen visitors to the Internet website, (a) dynamically

determining an optimal promotion using real-time analysis of the data from the

experiments, wherein the optimal promotion optimizes at least one economic variable

selected from a group of economic variables; and (d) displaying the optimal promotion to

the Internet merchant. At a minimum, both Robinson and Bibelnieks lack these features,

specifically lacking the ability to run experiments on randomly chosen visitors to the

website and then utilize the data from those experiments in real-time analyses to

determine an optional promotion. Further, It is respectfully submitted that the

combination of Robinson and Bibelnieks also fails to meet the limitations of the newly

added independent claim, in which there is no use of any sort of data in the experiments.

Claims 1-17 also stand rejected under 35 USC 102(e) as being anticipated by

Herz. As best understood, the invention set forth by Herz contemplates a system with the

ability to automatically determine which products a shopper would be most likely to buy,

and which offers a vendor should make available to the shopper in order to maximize the

vendor's profit. (Paragraph 0002, lines 1-5) The system constructs and updates shopper

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profiles based on specific demographic information and history of their shopping behavior. (Paragraph 0002, lines 5-9) These profiles are used to determine products and offers to present to shoppers. (Paragraph 0002, lines 9-13)

Many of the arguments presented above are equally applicable in distinguishing the instant invention from Herz. The outstanding Office Action takes the position that Herz teaches providing a promotion to the customer based on customer behavior. As shown above, this is in stark contrast to the instant invention. There is no teaching or suggestion that these promotions offered to the customer by Herz are based on real-time learning from promotional experimentation of various promotions offered to various consumers. It is respectfully submitted that there is a stark distinction between random sampling based upon user profiles and running experiments on randomly chosen visitors for which profiling is not a necessary step. Specifically, it is respectfully submitted that Herz et al. clearly falls short of teaching certain attributes of the present invention (as defined by the independent claims) in that, *inter alia*, it specifically lacks the ability to run experiments on randomly chosen visitors to the website and then utilize the data from those experiments in real-time analyses to determine an optional promotion.

It is thus respectfully submitted that Herz clearly falls short of present invention, as defined by the independent claims. Accordingly, Applicants respectfully submit that the applied art does not anticipate the present invention because, at the very least, "[a]nticipation requires the disclosure in a single prior art reference of each element of the claim under construction." *W.L. Gore & Associates, Inc. v. Garlock*, 721 F.2d 1540, 1554 (Fed. Cir. 1983); *see also In re Marshall*, 198 U.S.P.Q. 344, 346 (C.C.P.A. 1978).
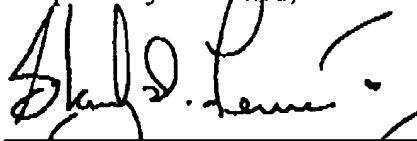
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In view of the foregoing, it is respectfully submitted that Claims 1 and 18 fully distinguish over the applied art and is thus in condition for allowance. By virtue of dependence from what are believed to be allowable independent Claim 1, it is respectfully submitted that Claims 2-17 are also presently allowable.

The "prior art made of record" has been review. Applicants acknowledge that such prior art was not deemed by the Office to be sufficiently relevant as to have applied against the claims of the instant application. To the extent that the Office may apply such art against the claims in the future, Applicants will be fully prepared to respond thereto.

In summary, it is respectfully submitted that the instant application, including Claims 1-18, are presently in condition for allowance. Notice to the effect is hereby earnestly solicited.

Applicants' undersigned attorney would welcomes further discussion with the Office in the event there are any further issues in this application.

Respectfully submitted,

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